

(2000) 11 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 32629 of 2000

Sethunathan Pillai and Others

APPELLANT

Vs

National Human Rights Commission and Others

RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Protection of Human Rights Act, 1993 — Section 18, 18(2), 36(2)

Citation : (2000) 11 KL CK 0004

Hon'ble Judges : K.K. Usha, Acting C.J.;Kurian Joseph, J

Bench : Division Bench

Advocate : R. Sivaraman and P.N. Gopinathan, for the Appellant; N. Nagaresh, Addl. Central Govt. Standing Counsel for Respondents 1 and 3 and Mohamed Yousuff, A.A.G. for Respondents 2 and 4, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Usha, A.C.J.

1. This is partly a public interest litigation and partly a private interest litigation. The first Petitioner is a practising lawyer and he claim; that he is a social activist engaged in taking up issues of public importance with statutory authorities for their redressal to the benefit of the public at large. Petitioners 2 and 3 are the parents of one Aravindakshan alias Maniyan who was killed in the police firing on 22nd May 1991. Following are the prayers made in this Original Petition:

(1) to issue a writ of mandamus or other writ or direction commanding the 4th Respondent to honour the direction Ext. P-3 issued by the 1st Respondent by disbursing Rs. 3,00,000 together with interest to the Petitioners 2 and 3 forthwith;

(2) to issue a writ of mandamus, or other writ or direction, commanding the 1st and 2nd Respondents to move the Hon"ble Supreme Court or concerned High Courts for ensuring the execution of each and every decision taken by it, on refusal of the Govt. or the concerned authorities in implementing the same or

after the expiry of the period granted to them for compliance;

(3) to issue a writ of mandamus, or other writ or direction, commanding the 3rd and 4th Respondents to enact necessary provision conferring powers upon the 1st and 2nd Respondents to implement their directions/decisions.

2. Ext. P-3 is a proceeding of the National Human Rights Commissions, dated 7th September 1999 in respect of an incident which happened on 22nd May 1991. The Commissioner had directed the Chief Secretary, Kerala to pay an amount of Rs. 3 lakhs to the next of the kin of deceased Aravindakshan. The second Petitioner brought the above proceeding to the notice of the 4th Respondent to which he received Ext. P-4 reply. The second Petitioner was informed by Ext. P-4 that Ext. P-3 cannot be implemented for two reasons, namely that Ext. P-3 had been issued beyond the time prescribed u/s 36(2) of the Protection of Human Rights Act, 1993 and that the enquiry conducted through the Revenue Divisional Officer has justified the firing which happened on 22nd May 1991.

3. Section 36(2) provides that the Commission or the State Commission shall not enquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. Admittedly in this case the act alleged had happened on 22nd May 1991. The complaint before the National Human Rights Commission itself is made in 1997. Ext. P-3 is dated 7th July 1999. The 4th Respondent is perfectly justified in taking the stand that Ext. P-3 had been issued without jurisdiction in view of the provisions contained in Section 36(2) of the Act.

4. Coming to the second prayer we find that neither the first Respondent nor the second Respondent could move the Supreme Court or this Court for execution of Ext. P-3 for the reason mentioned above. But the learned Counsel appearing on behalf of the Petitioners would contend that this prayer is not meant for implementing Ext. P-3. Large number of such proceedings are being issued by the National Commission as well as the State Commission which are not being implemented by the State Government. Under such circumstances the Commission should take recourse to the provisions contained u/s 18(ii) of the above-mentioned Act. Section 18 provides for steps to be taken by the Commission after the enquiry. The Commission may take any of the steps referred u/s 18 including approaching the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary. It is not possible for this Court to examine prayer No. 2 without any specific case. Apart from Ext. P-3 no other proceeding is brought to our notice by the petitioners which would justify an enquiry into the question whether the Commission should approach the Supreme Court or the High Court as provided u/s 18(ii) of the Act.

5. As far as the third prayer is concerned this Court has no jurisdiction to direct Respondents 3 and 4 to make an enactment in any particular manner. It is for the Petitioners to bring to the notice of the appropriate lawmaking authorities

about the inadequacy or inefficacy of the provisions in the protection of Human Rights Act and to persuade them to bring necessary amendment to the statute.

With these observations the Original Petition stands dismissed.